



Public Service  
Staffing Tribunal

Tribunal de la dotation  
de la fonction publique

FILES: 2007-0016, -0017, -0018, -0019

OTTAWA, APRIL 9, 2008

**TANYA SAMPERT, MARLENE PRICE, DIANE GARFIELD, AND HEATHER FONGER**

**COMPLAINANTS**

**AND**

**THE DEPUTY MINISTER OF NATIONAL DEFENCE**

**RESPONDENT**

**AND**

**OTHER PARTIES**

**MATTER** Complaints of abuse of authority pursuant to paragraph 77(1)(a) of the *Public Service Employment Act*

**DECISION** Complaints are dismissed

**DECISION RENDERED BY** Helen Barkley, Member

**LANGUAGE OF DECISION** English

**INDEXED** *Sampert et al. v. Deputy Minister of National Defence et al.*

**NEUTRAL CITATION** 2008 PSST 0009

## REASONS FOR DECISION

### INTRODUCTION

[1] In November, 2006 Tanya Sampert, Marlene Price, Diane Garfield, and Heather Fonger participated in an internal advertised appointment process for the position of Health Information/Records Management Team Leader (CR-05) in Support Services, 22 Canadian Forces Health Services Centre (CFHSC), Department of National Defence, Cold Lake, Alberta. The appointment process was open only to employees of CFHSC and nine candidates applied. While all four complainants were found qualified, another employee, Rebecca Cudmore, was selected for appointment to the position.

[2] Complaints were filed with the Public Service Staffing Tribunal (the Tribunal) under paragraph 77(1)(a) of the *Public Service Employment Act*, S.C. 2003, c. 22, ss.12, 13 (the *PSEA*) on January 14, 2007 on the basis that the manager abused her authority in the application of merit.

[3] While the subject of these complaints is an internal advertised appointment process initiated in November 2006 (the November 2006 process), much of the evidence and argument centred on a meeting at which employees were informed that a previous appointment process for the Team Leader position (the May 2006 process) was cancelled.

[4] To resolve these complaints, three issues must be addressed:

- (i) Did the respondent mislead the complainants as to the essential qualifications for the position and, if so, does this constitute abuse of authority?
- (ii) Did the respondent abuse its authority in the choice of Rebecca Cudmore as the appointee in this appointment process?
- (iii) Did the composition of the assessment board constitute abuse of authority?

## SUMMARY OF RELEVANT EVIDENCE

[5] Capt. Marjorie Ingjaldson was the assessment board chair and testified on behalf of the respondent. Because of the competitive job market in Cold Lake, there had been a number of unsuccessful processes run to fill the Team Leader position and everyone was frustrated.

[6] Capt. Ingjaldson had returned to work from maternity leave in July 2006. Prior to this, Warrant Officer Rochon had initiated an appointment process for the Team Leader position (the May 2006 process) and had assessed candidates. Capt. Ingjaldson had not been involved in developing this assessment tool, nor in assessing candidates. On Capt. Ingjaldson's return from maternity leave, the Civilian Human Resources Officer (the CHRO) expressed concerns to her about the assessment tool used. None of the candidates had been successful in the May 2006 process. Capt. Ingjaldson believed that the assessment tool was flawed and not the candidates' qualifications. She did not want employees to think they were not qualified, nor to be discouraged from applying in a new appointment process.

[7] At the same time, Capt. Ingjaldson asked if priority clearance had been obtained prior to the assessment. Since it had not, priority clearance was sought in July 2006. After discussion with several human resources experts, Capt. Ingjaldson decided to halt the appointment process.

[8] Capt. Ingjaldson called a meeting of support staff on August 28, 2006 to explain that the appointment process was halted. She informed them that the May 2006 process had been halted for administrative reasons.

[9] Marlene Price, Heather Fonger and Tanya Sampert testified at the hearing and explained that staff was informed at the meeting that an employee of the public service, a grain handler, entitled to a priority appointment, had been identified; this person did not have a medical records background. Staff was further informed by Capt. Ingjaldson that she wanted to give them an opportunity to be appointed to the Team Leader position. All of these witnesses testified that Capt. Ingjaldson had told them that medical records experience was the most important aspect of the Team Leader position. They

were also informed that a new CR-05 appointment process would be advertised in the near future.

[10] Capt. Ingjaldson testified that she confirmed there was a person entitled to priority, a grain handler from the Grain Commission. She did recall that medical records experience was deemed to be an important factor in the May 2006 assessment process but she did not recall what was said at the meeting. She testified that, from her point of view, while important, medical records experience was not the only important factor. She did not recall if Warrant Officer Rochon had said anything at the meeting.

[11] Connie Stone and Anne Ross testified on behalf of the complainants. They had been candidates in the November appointment process. Their memory of the events was unclear. Ms Stone remembered that what was discussed was the cancellation of one competition, and how they were going to run the next one. Ms. Ross did not recall anyone discussing why the previous competition had been halted. However, there was mention of a priority referral for the Team Leader position.

[12] At the end of September, 2006, Rebecca Cudmore arrived in the unit. Capt. Ingjaldson did not know Rebecca Cudmore prior to her arrival in the CFHSC. She had hired her as a CR-03 clerk through a generic appointment process that the CHRO had run. Ms. Cudmore was hired as the administrative assistant to the Clinical Services Manager.

[13] In November 2006, Capt. Ingjaldson initiated an internal advertised appointment process to fill the Team Leader position. She started with the Statement of Merit Criteria from the Primary Care Renewal Initiative, which was the standard for all clinics nationally. This had to be changed due to the difficult employment situation in Cold Lake. Therefore, the requirement for a college diploma in health information management was eliminated. Knowledge of medical terminology and the classification of diseases were made asset, not essential, qualifications.

[14] An email from Capt. Ingjaldson was sent to staff at CFHSC on November 16, 2006 to advertise the appointment process at issue. It stated that the process would be used to

staff the Team Leader CR-05 position, as well as for Health Records/Information Management Clerk (CR-04) positions. In the email, Capt. Ingjaldson stated:

As has been eagerly awaited, below is the advertisement for the Health Records Clerks and Health Records Team Leader positions. If you have any questions or concerns, please see either Capt Ingjaldson or Sgt Rochon for clarifications regarding this combined competition. NOTE: Applications must be received by close of business, 24 Nov 06. Attached below is the Statement of Merit Criteria for your review [...]

[...] For our assessment, we will be using the resume you submit, reference and interviews as required to ensure that the essential qualifications identified are met and assessed [...]

[15] Candidates were screened for education and experience. For the Team Leader position, candidates were required to demonstrate the following experience:

Experience in supervising staff

Experience in a health care environment

Experience managing health information/records

Experience working with Microsoft Office

[16] Eight candidates were found to meet these qualifications and were further assessed on a pass/fail basis for the remaining essential qualifications, which included three knowledge qualifications, five abilities, including the ability to supervise, and six personal suitability requirements.

[17] In terms of experience in managing health information/records, candidates had to have a working knowledge in the area. Candidates had to have some, but not necessarily in-depth, experience handling medical records. Capt. Ingjaldson assessed experience based on the candidates' résumés. Rebecca Cudmore had experience working with health information through her work as administrative assistant to the Clinical Services Manager (a medical doctor).

[18] In terms of the assessment board composition, Capt. Ingjaldson had discussed this with the CHRO. Warrant Officer Rochon was the Chief Clerk and had extensive clerical experience. She was the subject-matter expert in administrative processing. Lieut. McVarish was doing on-the-job training working with Capt. Ingjaldson two days per week. He did not have extensive experience with public servants, and she saw this

as a good learning opportunity for him. He did not know the applicants well, and was asked to approach the process impartially and objectively.

[19] During the candidate interviews, Capt. Ingjaldson read the qualification being assessed before she asked each question. If someone asked for clarification, she offered the same clarification to all. Some candidates had asked from which perspective (CR-04 or CR-05) the board wanted the question answered. Capt. Ingjaldson had answered from whichever perspective they wished. She explained at the hearing that If they answered the question adequately, then they would qualify for both the CR-04 and CR-05 pool.

[20] Ms. Sampert testified that she felt that there was confusion during the interview stage of this appointment process. Specifically, she had asked for clarification on several questions since it was unclear to her whether she should be answering the question from the point of view of the CR-04 (clerk) position, or the CR-05 (supervisor) position. According to Ms. Sampert, the board did not provide the clarification needed to properly answer the question.

[21] After each interview, the board went through each question and offered their individual scores for discussion. The members came to consensus on how the answer as a whole should be measured. The assessment board determined that all candidates were qualified for appointment.

[22] From among the qualified candidates, Capt. Ingjaldson determined that Rebecca Cudmore was the right fit for Team Leader, because a strong leader was needed to transition the unit from using paper files to electronic records. Although experience in dealing with health information/records was important, leadership and supervisory skills were extremely important. Ms. Cudmore had a very effective leadership style; she could implement change without being overbearing. In Capt. Ingjaldson's view, while she had less health information records experience than other candidates, Ms. Cudmore had a better leadership style to shift staff into the new electronic environment.

[23] In its assessment board report, Capt. Ingjaldson stated:

Due to the very good competition, it was difficult to choose the candidate for the CR05 position. After reviewing the competition documents, it was deemed that Rebecca Cudmore would be the best fit for the position. Her leadership skills are excellent and her approach to personnel management is the best fit for the organization. Although her experience with health records may be less than other leading candidates, her excellent leadership skills will benefit the department greatly. The review board feels confident with her ability to learn detailed information quickly, she is the "best fit" candidate for the CR05 Health Information/Records Management Team Leader.

[24] The complainants who testified stated that Rebecca Cudmore had the least medical records experience of all nine applicants. She had been a Resource Management Support Clerk in the Canadian Forces, which is a general administrative position. Ms. Fonger had spent a half day with Ms. Cudmore in October, 2006 when she had first started in CFHSC; Ms. Fonger showed her how to put documents on the medical files. At the time of the November appointment process, she had only worked in CFHSC for 1½ months. Moreover, she had only worked a half day in medical records.

#### ISSUES

**Issue I:** Did the respondent mislead the complainants as to the essential qualifications for the position and, if so, does this constitute abuse of authority?

#### A) COMPLAINANTS' ARGUMENTS

[25] The complainants contend that Capt. Ingjaldson made it quite clear at the meeting held in August 2006 that experience in managing health information/records was the most important qualification for the position of Team Leader. She indicated at that time that the previous appointment process was being cancelled and that a public servant, who enjoyed a priority for appointment, would not be hired because he did not have any experience with medical records. Several months later, the same position was advertised. An employee who had 1½ months experience in the CFHSC, as assistant to the Clinical Services Manager, was appointed to the Team Leader position based on her supervisory experience.

[26] This action constituted bad faith. The manager had told the complainants that medical records experience was paramount. Yet, after applications were received, the focus completely changed, and supervisory experience became the most important

qualification. The only conclusion that can be drawn is that the process was altered once the candidates were known.

[27] Because Capt. Ingjaldson was an officer in the Canadian Forces, the complainants took her at her word, as if it were an order. If that “order” changed, then it should have been communicated to the candidates in the appointment process.

[28] Another indication of the change in emphasis on qualifications was that only 5 out of 27 questions in the interview concerned supervision. This demonstrated that supervision was not very important when the assessment tools were developed.

#### B) RESPONDENT’S ARGUMENTS

[29] The respondent stated that the complainants believed that certain representations had been made to them in August 2006, which led them to develop an expectation of how the appointment process for Team Leader was going to proceed.

[30] There were no representations made to candidates about the qualifications for the Team Leader position. Capt. Ingjaldson returned from maternity leave and, after discussions, the May 2006 process was halted due to perceived irregularities and mistakes. Capt. Ingjaldson called a meeting on August 28, 2006 and informed candidates that the May 2006 process had been halted for administrative reasons. At the same meeting, she mentioned that there was a public servant, a grain handler, entitled to a priority appointment. The complainants perceived that the previous appointment process was being halted because of the priority, but they never sought clarification of this situation.

[31] The respondent submitted that it was important to determine what information was communicated to the complainants. Six witnesses testified on behalf of the complainants, Ms. Sampert stated that they were informed that the process was stopped because of a priority grain handler. But others admitted to not having a clear recollection. Capt. Ingjaldson did confirm that she had advised the employees in CFHSC at the meeting that the May 2006 process was halted. She also advised them that there was a priority in the system. She did not state that the process was halted



because of a priority employee. She made no statements as to the qualifications for the CR-05 position in the upcoming appointment process.

[32] Capt. Ingjaldson testified that she developed the Statement of Merit Criteria for the position in November 2006, just before advertising the appointment process. Given this, she would not have made representations as to qualifications in August 2006.

#### C) PUBLIC SERVICE COMMISSION'S ARGUMENTS

[33] The Public Service Commission (the PSC) did not appear at the hearing. As it has done in previous complaints, the PSC provided general written submissions on the concept of abuse of authority, and how the Tribunal should focus its approach in this area.

#### ANALYSIS

[34] The complainants allege that they were misled by Capt. Ingjaldson into believing that medical records experience was the paramount qualification for the position at a meeting held approximately three months before the appointment process was advertised. While several persons who attended the meeting testified at the hearing, some of the facts, including the date and purpose of the meeting, have been difficult to establish.

[35] However, based on the evidence, the Tribunal finds the following took place during the August 2006 meeting. Candidates were informed that the previous appointment process was cancelled "for administrative reasons". There was also an announcement that a public servant, a grain handler, had a priority entitlement for appointment and had been considered for the position. A statement was made that medical records experience was important. These statements were made in the context of the appointment process of May 2006. Employees were also informed at this meeting that there would be a new appointment process for the Team Leader (CR-05) position, and candidates would also be assessed at the same time for Medical Records Clerks (CR-04), in case there were vacancies.

[36] The Tribunal further finds as a fact that the previous appointment process was cancelled due to an inappropriate assessment tool. However, candidates were merely informed that the process was stopped “for administrative reasons”. This vague statement probably led to speculation as to the reason the process was halted, the link being made between the cancellation of the process and the priority grain handler and the importance of medical records experience.

[37] The advertisement for the CR-05 position was not published until November 16, 2006, almost three months after the meeting. Once management decides to staff a vacancy through an advertised appointment process, in addition to advertising the position, it is required to make available the Statement of Merit Criteria. This document alerts candidates to the essential and asset qualifications for the position. These are the criteria against which candidates will be assessed. One of the reasons that this statement is in writing is to clearly inform all potential candidates of the requirements for the position, and what they will need to demonstrate to be appointed.

[38] In this case the Statement of Merit Criteria was made available when the process was advertised and it represents the best evidence of the qualifications established for this appointment process. There is absolutely no indication on the Statement of Merit Criteria that health information/records experience was the most important qualification for the Team Leader position. On the contrary, the document clearly states that candidates would be required to demonstrate experience in the following areas: supervising staff; working in a health care environment; managing health information/records; and, working with Microsoft Office.

[39] Furthermore, a statement made in the context of a previous appointment process which was being cancelled, cannot be paramount to the Statement of Merit Criteria. Nor can it be seen as a promise or representation of how the next process will be run.

[40] The Tribunal finds that the complainants have failed to establish on a balance of probabilities that they were misled about the qualifications which would be required and assessed for the appointment process initiated in November 2006. It follows, therefore, that this allegation of abuse of authority is not substantiated.

**Issue II:** Did the respondent abuse its authority in the choice of Rebecca Cudmore as the appointee in this appointment process?

#### COMPLAINANTS' ARGUMENTS

[41] The complainants contend that the appointee had practically no experience managing health information/records. She had worked in the CFHSC for only 1½ months as the assistant to the Clinical Services Manager. She had worked with Heather Fonger for a half day only in medical records. This could not be considered experience managing health information/records.

#### RESPONDENT'S ARGUMENTS

[42] The Statement of Merit Criteria set out the essential qualifications for the Team Leader (CR-05) and Clerk (CR-04) positions. One of the essential experience requirements was "experience managing health information/records." The statement did not indicate how much experience was required. Capt. Ingjaldson testified that there was no minimum amount of experience required. Her testimony is consistent with what was stated on the document. She was looking for some experience with health information/records.

[43] Rebecca Cudmore arrived at CFHSC in October 2006 to perform the duties of a CR-03 position. There is no evidence that Capt. Ingjaldson colluded in her placement in the clinic. In fact, Capt. Ingjaldson testified that she did not know Ms. Cudmore. The appointment process was open to public servants and members of the Canadian Forces within CFHSC. The complainants have failed to prove that Ms. Cudmore was not qualified for the position.

[44] Capt. Ingjaldson testified that she had selected Ms. Cudmore from the pool of qualified candidates because she needed a strong leader. In her view, Ms. Cudmore was the right fit for the position of Team Leader.

[45] In support of its position, the respondent refers to *Visca v. Deputy Minister of Justice et al.*, [2007] PSST 0024, which outlined the broad discretion enjoyed by

managers in establishing qualifications, and also in choosing the person who is the right fit for the job.

#### ANALYSIS

[46] The Tribunal's decision in *Visca* outlines some of the changes to the staffing regime with the coming into force of the *PSEA*:

[34] A key legislative purpose found in the preamble of the *PSEA* is that managers should have considerable discretion when it comes to staffing matters. To ensure the necessary flexibility, Parliament has chosen to move away from the previous staffing regime with its rules-based focus under the former *PSEA*. There is no set of strict rules in the *PSEA* on how qualifications should be established, what method of assessment should be used, or how a candidate who meets the essential and asset qualifications is chosen for appointment. Rather, Parliament has provided those with staffing authority with the means to exercise the discretionary aspects of their authority, according to their judgment [...]

[42] Broad discretion is given to managers under subsection 30(2) of the *PSEA* to establish the necessary qualifications for the position they want to staff and to choose the person who not only meets the essential qualifications, but is the right fit. Similar discretion is provided under section 36 of the *PSEA* for those with staffing authority to choose and use assessment methods to determine if the person meets the established qualifications [...]

[47] Capt. Ingjaldson exercised her discretion under section 30(2) of the *PSEA* and established “experience managing health information/records” as one of the essential qualifications for the Team Leader position. She testified that she did not deem it an absolute requirement that candidates know exactly how a medical file operates. Candidates had to have a working knowledge of managing health information /records. They would need to know what the file would hold and how files were pulled for appointments. When she screened the candidates she looked for evidence of experience managing health information/records in the candidates' résumés. She did not establish a particular amount/length of time needed. She found evidence of that experience in Ms. Cudmore's résumé. The relevant part of the resume reads:

Experience in managing health information/records – I have experience in managing health information and records. I have processed files for appointments, pulled files for sick parade, and filed correspondence in accordance with practiced policy.

[48] As Support Services Manager, Capt. Ingjaldson hired Ms. Cudmore as the administrative assistant to the Clinical Manager, a medical doctor. At the hearing, Capt. Ingjaldson stated that in that position Ms. Cudmore would have experience

working with health information. At the time of screening for experience, Ms. Cudmore had six weeks experience in CFHSC. She concluded it was an appropriate level of health information/records experience for the Team Leader position.

[49] The Tribunal finds that the assessment board's conclusion that Ms. Cudmore had the required experience was not unreasonable in the context of the Team Leader position.

**Issue III:** Did the composition of the assessment board constitute abuse of authority?

#### COMPLAINANTS' ARGUMENTS

[50] The complainants maintain that the composition of the assessment board was improper. Two of the members of the board, Warrant Officer Rochon and Lieut. McVarrish, reported to Capt. Ingjaldson. These three individuals worked closely together and would be influenced by each other.

#### RESPONDENT'S ARGUMENTS

[51] The complainants' submission that the assessment board was improperly composed of three persons within the clinic was mere conjecture. Warrant Officer Rochon was Chief Clerk in the CFHSC. Lieut. McVarrish was a member of the reserves who was on a work placement at the clinic, and Capt. Ingjaldson thought it would be a good learning experience for him to be part of the assessment board.

[52] The *PSEA* gives the deputy head discretion to choose the method of assessing candidates.

#### ANALYSIS

[53] There is no provision in the *PSEA* which requires a deputy head to establish an assessment board or that it have a certain composition (for example, to have a human resources officer on the board). Whether an assessment board is improperly constituted is a question of fact which depends on the specific complaint and the evidence presented at the hearing.

[54] Those who conduct the assessment should be familiar with the work required in the position to be staffed and, in the case of an advertised appointment process, should not have with any preconceived notions as to who should be appointed. In some cases, managers will choose to conduct the assessment completely on their own. In other cases, a manager might invite an individual from another department or another area within the department, who has a particular expertise, to participate as a board member.

[55] For the purpose of interviewing candidates, Capt. Ingjaldson, as the manager, established an assessment board of herself and two other persons working at CFHSC - Warrant Officer Rochon, who was the Chief Clerk, and had a great deal of technical expertise, and Lieut. McVarish, who was less familiar with the candidates, was chosen to provide him with a learning opportunity.

[56] The complainants have the burden of proving abuse of authority. In this case, they have merely stated that the assessment board should have had a third party, such as a human resources officer, on the board, but have not provided any cogent evidence to show that the board, as constituted, acted improperly in any way. Moreover, they have not pointed to any statutory authority that requires a specific person, be it human resources officer or otherwise, to be a member of the assessment board. Therefore, this allegation of abuse of authority is not substantiated.

#### DECISION

[57] For the reasons stated above, these complaints are dismissed.

Helen Barkley  
Member

PARTIES OF RECORD

Tribunal Files:	2007-0016, 2007-0017, 2007-0018 and 2007-0019
Style of Cause:	<i>Tanya Sampert, Marlene Price, Diane Garfield, and Heather Fonger and the Deputy Minister of National Defence et al.</i>
Hearing:	November 6-7, 2007 Edmonton, Alberta
Date of Reasons:	April 9, 2008
APPEARANCES:	
Patrick Weber	For the complainants
Caroline Engmann	For the respondent
John Unrau	For the Public Service Commission